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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,820	01/05/2004	Douglas S. McNair	CRNC.103792	3634

46169 7590 08/09/2007
SHOOK, HARDY & BACON L.L.P.
Intellectual Property Department
2555 GRAND BOULEVARD
KANSAS CITY, MO 64108-2613

EXAMINER

NGUYEN, TRAN N

ART UNIT	PAPER NUMBER
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3626

MAIL DATE	DELIVERY MODE
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08/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/751,820		MCNAIR, DOUGLAS S.	
	Examiner		Art Unit	
	Tran N. Nguyen		3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/10/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

This communication is in response to the communication filed 07/10/2007.

Pending claim(s): 1. Amended claim(s): 1.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 07/10/2007 is entered and considered by Examiner.

It is noted that citation numbers 6-7 were not available at the time of this Office Action. Additional clarification is requested.

Response to Amendment

As per the objection to the specification imposed in the previous Office Action, this objection is hereby withdrawn in view of Applicant's amendment to the specification.

As per the rejection of claim 1 under 35 USC 112, second paragraph imposed in the previous Office Action, this rejection is hereby withdrawn in view of Applicant's amendment to claim 1.

As per the rejection of claim 1 under 35 USC 101 imposed in the previous Office Action, this rejection is hereby withdrawn in view of Applicant's amendment to claim 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 1 is/are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1, this claim recites "the distance values measured in physical distance or elapsed time" (emphasis added) (page 5). Claim 1 further recites "based upon time and distance") (emphasis added) (Page 7).

Since page 5 renders one element optional ("or") and page 7 requires both elements ("and"), the scope of claim 1 is indefinite. In particular, an input element made optional by the claim cannot be required as a functional limitation of the end result because the optional element was not a required input.

For purposes of applying prior art, Examiner interprets the limitation of page 7 to recite "based upon time or distance" (emphasis added).

Additional clarification is requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim(s) 1 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant-cited art number 11 of the IDS submitted 07/10/2007 (Weinert) in view of Ashton (Geographic Variations in Utilization Rates in Veterans Affairs Hospital and Clinics, copy provided to Applicant in previous Office Action).

As per claim 1, Weinert discloses a method capable of:

(a) being computerized (page 458 column 2 paragraph 1);

(b) providing a predictor variable or dependent variable in investigations of the relationship between rurality and health-care variables (page 463 column 2 paragraph 6) for a locality comprising a plurality of health care institutions (page 454 column 2 paragraph 3);

the method comprising:

(a) obtaining data pertaining to the distance to care and the population for county residences (It is noted that data on county residences are considered to be "a catchment area") (page 455 column 2 paragraph 2);

(b) normalizing amounts and counts as measures of distance (It is noted that amounts and counts are considered to be "proband counts") (page 456 column 2 paragraph 7);

(c) transforming the distance values using a Box-Cox power transformation (page 456 column 2 paragraph 8), wherein the distance value represents the distance to care (page 455 column 2 paragraph 2);

(d) transforming the population values using a Box-Cox power transformation (page 456 column 2 paragraph 9), wherein the population is measured in persons (page 459 Table 1);

(e) standardizing the distance and population values using standard deviation and signs, thereby transforming the distance and population values (page 457 column 1 paragraph 3);

(f) weighting the standardized transformed values (page 457 column 1 paragraph 4) and summing standardized values to form an initial index (It is noted that the initial index is considered to be "a provisional index") (page 457 column 2 paragraph 1);

(g) standardizing the initial index to have a mean of zero and a standard deviation of one (page 457 column 2 paragraph 2);

(h) seeking the optimal choices for λ_1 and λ_2 such that the Anderson-Darling measure of deviation from normality minimized (page 458 column 1 paragraph 3-4);

(i) applying the optimal values of λ_1 and λ_2 to produce the rurality index (page 458 column 1 paragraph 1;

(j) analyzing the distribution to determine a grouping for the rurality index, and using tables of standard normal distribution to find percentiles and probabilities for the rurality index (page 458 column 2 paragraph 3);

(k) risk-adjusting access to care and health care utilization using the rurality index and distance categories (page 458 column 2 paragraph 2) to represent the differences in access to care due to distance (page 455 column 2 paragraph 3);

(l) displaying the results (It is inherent that a computer program computing optimal transformation values displays the results either as visual indicia to the user or as data parameters to another program) (page 458 column 2 paragraph 1).

Weinert does not disclose risk-adjusting using age.

Ashton discloses risk-adjusting based on age (page 34 column 1 paragraph 4).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Ashton within the invention as disclosed by Weinert with the motivation of controlling for variations attributable to patient factors outside the control of the medical care system (Ashton; page 34 column 1 paragraph 4).

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Seare (5557514).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from Examiner should be directed to Tran N. Nguyen (Ken) whose telephone number is (571) 270-1310. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:00 pm, Eastern Time.

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If attempts to reach the examiner by telephone are unsuccessful, Examiner's Supervisor, Joseph Thomas can be reached on (571) 272-6776.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TN 
08/02/2007

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